

This checklist was developed for use by examiners as part of policy and forms review.

Checklist For An Annuity With A Waiver Of Surrender Charge For Early Withdrawal In The Case Of Terminal Or Chronic Illness

Note that all of the following requirements are in addition to those for the underlying annuity product.

211 CMR 55.00 applies to all annuity contracts with waivers of surrender charges for early withdrawals of annuity proceeds **offered in Massachusetts on and after January 1, 2000**. The provisions of 211 CMR 55.00 supersede Division of Insurance Bulletin Number SRB-94-4. *211 CMR 55.01 and 55.02*

The carrier may require a separate premium charge for a provision allowing for the waiver of surrender charges for early withdrawals on annuity proceeds. *211 CMR 55.05(9)(a)*

___ Is there an additional premium for the benefit?

___ yes ___ no

If yes,

___ Carrier must file an actuarial memorandum with the product to support the additional premium. *211 CMR 55.05(9)(b)*

Definitions

Any of the following definitions in the contract must be substantially similar to those set forth in 211 CMR 55.04:

___ Activities of Daily Living: eating, toileting, transferring, bathing, dressing, and continence.

___ Chronic Illness: a condition because of which an individual has been certified by a licensed health care practitioner as:

(a) being unable to perform (without substantial assistance from another individual) at least two Activities of Daily Living for a period of at least 90 days due to a loss of functional capacity;

(b) having a level of disability similar to the level of disability described above; or

(c) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

Such term shall not include conditions otherwise meeting these requirements unless within the preceding 12-month period a licensed health care practitioner has certified that such individual meets such requirements.

___ Licensed Health Care Practitioner: any physician (as defined in section 1861(r)(1) of the federal Social Security Act) and any registered professional nurse, licensed social worker or other individual who meets such requirements as may be prescribed by the federal Secretary of Health and Human Services, or as defined in the federal Health Insurance Portability and Accountability Act or any successor law or any regulation promulgated thereunder. The Licensed Health Care Practitioner must be acting within the scope of his or her license in the state of licensure when providing covered services or performing actions required by the contract.

___ Qualified Long-Term Care Services: the necessary diagnostic, preventive, therapeutic, curing, treating, mitigating and rehabilitative services, and maintenance or personal care

services that are required by a chronically ill individual and are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

___ Special Benefits: benefits including, but not limited to:

the waiver of the surrender charge for early withdrawal of annuity proceeds in annuity contracts. *Note: the Division does not have a list of additional acceptable "special benefits." Any "special benefits" will be reviewed on a case-by-case basis. As filings are reviewed under this regulation, a list will be developed. In the meantime, all such benefits must be, at a minimum, actuarially supported, i.e., the benefits must be reasonable in relation to the premium charged.*

___ Terminal Illness: a condition that a physician certifies will reasonably be expected to result in a drastically limited life span as specified in the contract, for example, twenty-four (24) months or less.

___ Total and Permanent Disability: any of the following conditions as specified in the contract:

- (a) terminal illness, as defined in 211 CMR. 55.04;
- (b) chronic illness, as defined in 211 CMR. 55.04;
- (c) a medical condition, including but not limited to one of the following specifically named or described conditions, which the insured's physician certifies has required or will require extraordinary medical intervention without which the insured would have died, or will die:
 - 1. Acquired Immune Deficiency Syndrome;
 - 2. Coronary artery disease resulting in acute infarction or requiring surgery;
 - 3. End-Stage Renal Disease;
 - 4. Major organ transplant;
 - 5. Medical condition requiring continuous life support; or
 - 6. Permanent neurological deficit resulting from cerebral vascular accident; or
- (d) other qualifying conditions that meet the definition in (c) above and that are approved by the Commissioner for any particular filing. *Note: at this time, the only other qualifying condition that has been approved is "life-threatening cancer" that is specifically defined in the contract. Any additional conditions should be carefully reviewed to compare the definition with those above and to make sure that the definitions are clear enough that consumers are not misled.*

Minimum Standards

___ Annuity contracts with a waiver of surrender charges for the early withdrawal of annuity proceeds may not contain any pre-existing condition exclusion provisions; nor may such products contain an incontestability clause which differs in duration or, if not added after issuance of the underlying contract, has an effective date different from any such clause contained in the total and permanent disability provision, if any, of the underlying annuity contract. 211 CMR 55.05(2)

___ A carrier may require that reasonable additional evidence be provided that the insured is totally and permanently disabled as defined in 211 CMR 55.04. 211 CMR 55.05(3)(a)

___ For the purposes of 211 CMR. 55.05(3)(a), "reasonable additional evidence" means:

- 1. additional certification at the carrier's expense, by a physician, or, at the option of the carrier in the case of a Chronic Illness, by a licensed health care practitioner, who is not a member of the contractholder's or insured's

immediate family and who is not associated with or in any way affiliated with the provider rendering the services in question;

2. a finding by the Social Security Administration entitling the insured to disability benefits;
3. a finding of eligibility of total and permanent disability by an Industrial Accident Board or similar agency under a worker's compensation system; or
4. a disability determination enabling an insured to make an early withdrawal from an individual retirement account or similar instrument without penalty from the Internal Revenue Service; or
5. any other evidence approved by the commissioner. *Note: at this time, no other contract language has been approved under this provision.*

___ The annuity contract must specify all possible payment options. *211 CMR 55.05(5)(a)*

___ A contractholder may not be required to specify which type of option to exercise until the time of a qualifying event, except in cases that the individual qualifies for benefits only because of chronic illness, or in cases when the contract provides benefits only for chronic illness. *211 CMR 55.05(5)(b)*

___ The carrier must give the contractholder the option to receive the full amount of the early withdrawal of the annuity proceeds available as a lump sum, in addition to any other methods of payment offered except in cases that the individual qualifies for benefits because of chronic illness only, or in cases when the contract provides benefits for chronic illness only. *211 CMR 55.05(5)(c)*

___ Carriers may not make the benefit available as an annuity contingent upon the life of the insured. *211 CMR 55.05(5)(d)*

___ A carrier offering contracts providing benefits for conditions of chronic illness only may also provide special benefits over and above the waiver of surrender charges to be payable for expenses incurred for qualified long-term care services. *211 CMR 55.05(6). Note: the Division does not have a list of additional acceptable "special benefits." Any "special benefits" will be reviewed on a case-by-case basis. As filings are reviewed under this regulation, a list will be developed.*

___ A carrier may not restrict the use of the early withdrawal of the annuity proceeds in any way; nor may any carrier attempt to recoup all or any portion of benefits paid out under an accelerated benefit product, except in contestable cases of material misrepresentation, fraud or criminal misconduct. *211 CMR 55.05(7)(a) but note:*

___ In cases that the individual qualifies for benefits because of chronic illness only, the benefit amount must be payable only for expenses incurred for qualified long-term care services. *211 CMR 55.05(7)(b)*

Note: Any provision that caps the amount subject to early withdrawal (i.e., less than the full amount) will be reviewed to consider the relation of the premium charged to the benefit provided.

___ The contract must contain a provision that states that when there is a waiver of surrender charge for an early withdrawal of annuity proceeds, there may be no more than a pro-rata reduction in the cash value based on the percentage of the early withdrawal in relation to the annuity proceeds. *211 CMR 55.05(10)(a)*

OR

- ___ The waiver of surrender charge for an early withdrawal of annuity proceeds, and any reasonable administrative expense charges, any future premiums and any accrued interest may be considered a lien against the death benefit or annuity proceeds of the underlying contract or rider, and the access to the cash value may be restricted to any excess of the cash value over the sum of any other outstanding loans and the lien. Future access to additional contract loans may be limited to any excess of the cash value over the sum of the lien and any other outstanding contract loans. *211 CMR 55.05(10)(b)*
- ___ The contract must contain a provision that states that if and when an early withdrawal of annuity proceeds with a waiver of surrender charge causes a pro rata reduction in the cash value of the underlying annuity, at the option of the contractholder, the payment may first be applied toward repaying all or a portion of any outstanding contract loan. *211 CMR 55.05(11)*
- ___ The contract must contain a provision that states that if there is no additional premium payment, the annuity may not be reduced by more than the amount of the early withdrawal for which surrender charges were waived in either case adjusted for any applicable actuarial discount, accrued interest appropriate to the contract design, or for any reasonable administrative expense charge. *211 CMR 55.05(12)*
- ___ Does the contract have an accidental death benefit?
___ yes ___ no
If yes, the contract must have the following provision:
___ If any death benefit or annuity balance remains after the early withdrawal of annuity proceeds for which surrender charges were waived, the accidental death benefit provision in the underlying contract may not be affected by the payment of any early withdrawal of annuity proceeds. *211 CMR 55.05(13)(a)*
___ If no death benefit or annuity balance remains, the accidental death benefit provision, if any, in the underlying contract will have no effect. *211 CMR 55.05(13)(b)*
- ___ The contract must contain a provision that states that if the benefit is paid in periodic payments instead of a lump sum, and the contract's underlying contract values change with each payment, each time a benefit payment is made, the carrier is required to send to the contractholder a statement containing the underlying contract values. *211 CMR 55.06(4)*
- ___ Riders or endorsements that provide a benefit for which a specific premium is charged must show the premium on the application, rider, or elsewhere in the contract. *211 CMR 55.06(2)(i)*
___ Any rider that reduces benefits requires a signed acceptance by the contractholder or certificateholder unless such coverage is provided under a master contract owned by an employer or trade union. *211 CMR 55.06(2)(j)*
- ___ No misleading contract names may be used. *211 CMR 55.06(2)(b)*
- ___ The term "accelerated benefit" must be included in the description, and the term "long-term care insurance" may not be used in describing or marketing accelerated benefit products. *211 CMR 55.06(2)(c)*

Disclosures

- ___ Carriers offering waiver of surrender charges for early withdrawals of annuity proceeds must file a disclosure statement that is to be offered to the applicant at the time application is

made or by separate communication with receipt or certification of delivery. The disclosure statement:

___ must be a free-standing document. 211 CMR 55.06(1)(a)

___ must not contain material of an advertising nature. 211 CMR 55.06(1)(a)

___ must be signed by the owner or proposed owner of the contract, as well as the writing agent, broker or company representative at the time of application. 211 CMR 55.06(1)(a)

___ must be substantially similar to the following, as described in 211 CMR 55.100.

Note: For contracts that do not provide benefits in the case of chronic illness, carriers may omit from the disclosure statement all references to chronic illness. 211 CMR 55.06(1)(c)

- Disclosure required by 211 CMR 55.100:

REQUIRED DISCLOSURE STATEMENT FOR EARLY WITHDRAWALS ON ANNUITY PROCEEDS

[The disclosure statement shall be substantially similar to the following form, as found in 211 CMR 55.100.]

A. Consequences of This Benefit

Receipt of early withdrawals on annuity proceeds MAY AFFECT MEDICAID and SUPPLEMENTAL SECURITY INCOME ("SSI") ELIGIBILITY. The mere fact that you own a contract with an option to make an early withdrawal on annuity proceeds without a surrender charge may affect your eligibility for these government programs. In addition, exercising the option to make an early withdrawal on annuity proceeds and receiving those benefits before you apply for these programs, or while you are receiving government benefits, may affect your initial or continued eligibility. Contact the Medicaid Unit of your local Division of Medical Assistance and the Social Security Administration for more information.

B. Medical Condition(s) enabling waiver of surrender charge for early withdrawals:

[Use whichever are included in the contract.]

[___ (1) Terminal Illness which means a condition that a physician certifies will reasonably be expected to result in a drastically limited life span as specified in the contract, for example, twenty-four (24) months or less.

___ (2) Chronic Illness which means a condition because of which an individual has been certified by a licensed health care practitioner as:

- (a) being unable to perform (without substantial assistance from another individual) at least two Activities of Daily Living for a period of at least 90 days due to a loss of functional capacity;
- (b) having a level of disability similar to the level of disability described above; or
- (c) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

___ (3) a medical condition, including but not limited to one of the following specifically named or described conditions, which the insured's physician certifies has required or will require extraordinary medical intervention without which the insured would have died, or will die:

- (a) Acquired Immune Deficiency Syndrome;
- (b) Coronary artery disease resulting in acute infarction or requiring surgery;
- (c) End-Stage Renal Disease;
- (d) Major organ transplant;
- (e) Medical condition requiring continuous life support;
- (f) Permanent neurological deficit resulting from cerebral vascular accident; or

___ (4) [other qualifying conditions approved by the Commissioner for this contract. (list condition)_____]

C. Option(s): [list which of the following will be available at the time of a claim]:

___ [insert percentage] of total annuity proceeds as LUMP SUM (ALWAYS AVAILABLE except in cases that the individual qualifies for benefits because of Chronic Illness only.)

___ [insert percentage] of total annuity proceeds in periodic payments

___ Up to [insert percentage] of total annuity proceeds in periodic payments

[Carrier shall describe the terms of any partial distribution or periodic payment plan, including the amount, number, and frequency of payments scheduled.]

D. Premium for Waiver of Surrender Charges for Early Withdrawals of Annuity Proceeds:

[Carrier shall identify the amount and date due of any separate identifiable charge for the waiver of the surrender charge for early withdrawals of annuity proceeds; if there is no such charge, the carrier shall indicate that there is no additional charge for the provision.]

E. Administrative Expense Charge: _____

[Carrier shall include the amount and date due of any administrative expense charged to administer the accelerated benefits and an explanation of the effect on benefits.]

Signature of Applicant

Signature of Carrier Representative

Additional Disclosure Required at Time of Claim for Accelerated Benefits

- ___ Carriers must file a disclosure statement, as described in 211 CMR 55.110, that is to be offered to the applicant at the time application for early withdrawal with waiver of surrender charges is elected or by separate communication with receipt or certification of delivery.
211 CMR 55.06(1)(b)
- ___ All terms used must be clearly explained so that the contractholder understands the effect of making an early withdrawal on annuity proceeds. *211 CMR 55.06(1)(b)*
Note: For contracts that do not provide benefits in the case of chronic illness, carriers may omit from the disclosure statement all references to chronic illness. *211 CMR 55.06(1)(c)*
- ___ The carrier must prominently note the following, in substantially similar form and content, on either the face of the claim settlement, or on a sticker attached to the face of the settlement of a claim for accelerated benefits: "Accelerated benefit payments from this contract may qualify for special tax status, if, according to federal definitions, the insured qualifies as terminally ill, or qualifies as chronically ill and uses the accelerated benefit to pay for costs incurred by the insured for qualified long-term care insurance services provided for the insured during the chronic illness. However, if the accelerated benefit is based on "medical conditions" and not terminal or chronic illness as defined in the federal tax code, the benefits may be taxable. We recommend that you contact a tax advisor when making tax-related decisions about electing to receive and use benefits from an accelerated benefit product." *211 CMR 55.06(3)(a)*
- ___ The carrier must provide an illustration as set forth in 211 CMR 55.110, or one which contains substantially the same information in a format approved by the Commissioner. The illustration must be as follows:

Required Disclosure at the Time of Application for Waiver of Surrender Charge on Early Withdrawal of Annuity Proceeds Where Less than the Full Value is Withdrawn

[The disclosure statement shall be substantially similar to the following form.]

Consequences of this Benefit

Receipt of an early withdrawal on annuity proceeds MAY AFFECT MEDICAID and SUPPLEMENTAL SECURITY INCOME ("SSI") eligibility. The mere fact that you own a contract with an option to make an early withdrawal on annuity proceeds without a surrender charge may affect your eligibility for these government programs. In addition, exercising the option to make an early withdrawal on annuity proceeds and receiving those benefits before you apply for these programs, or while you are receiving government benefits, may affect your initial or continued eligibility. Contact the Medicaid Unit of your local Division of Medical Assistance and the Social Security Administration for more information.

A. Effect on Contract Values: Cash values, loan values, and the annuity proceeds **WILL BE REDUCED** if you make an early withdrawal of the annuity proceeds. Here is an illustration of the effect on the proceeds:

(1) Amount to be Withdrawn: _____

(2) Annuity Cash Value:

[Carrier shall include values at all ages pertaining to the individual, and the effect of an early withdrawal.]

(3) Annuity Death Benefit: Carrier shall provide a written explanation of the effect of the early withdrawal on the death benefit and provide an illustration. [Carrier shall show amount and date of reduced value.]

(4) Contract Loans:

[Carrier shall list any outstanding contract loans, and the effect of an early withdrawal.]]

Signature of Applicant

Signature of Carrier Representative

Contents of the Actuarial Memorandum

Note: These requirements are in addition to those for the underlying product.

- ___ Is there an additional premium for the waiver of surrender charge benefit?
 - ___ yes ___ no
 - If yes,
 - ___ carrier must include support for the charge in its actuarial memorandum with the filing. *211 CMR 55.05(9)(b)*
- ___ When benefits are intended to be provided through waiver of surrender charges for early withdrawals from annuity proceeds, contract reserves must be determined in accordance with the Standard Valuation Law. *211 CMR 55.05(14)(a)*
- ___ All valuation assumptions used in constructing the reserves must be determined as appropriate for statutory valuation purposes by a member in good standing of the American Academy of Actuaries. *211 CMR 55.05(14)(b)*
 - ___ Mortality tables and interest rates currently recognized for life insurance reserves by the NAIC may be used as well as appropriate assumptions for the other provisions incorporated in the contract form. *211 CMR 55.05(14)(b)1.*
 - ___ The actuary must follow both actuarial standards and certification for good and sufficient reserves. *211 CMR 55.05(14)(b)2.*
 - ___ Reserves in the aggregate shall be sufficient to cover:
 - a. contracts upon which no claim has yet arisen, as well as
 - b. contracts upon which an early withdrawal of annuity proceeds has arisen. *211 CMR 55.05(14)(b)3.*
- ___ Exemption from Reserves. No additional reserves need to be established for the following products:
 - ___ For contracts which provide actuarially equivalent benefits with or without an option to waive the surrender charges for early withdrawal of annuity proceeds. *211 CMR 55.05(15)(a)*
 - ___ For annuities with a waiver of surrender charges for early withdrawal of annuity proceeds without separate premium charge and which are experience-rated. *211 CMR 55.05(15)(b)*